G. R. S. IX

Previous references.

P6-G(348+400) 1919-20.

(C.P.)

Later references.

P 10-21-23, 29, 39, 41

GENERAL AND REVENUE [illegible]IAT.

Serial Nos. One only

Part B for January 1921

SUBJECT.

Food Supply arrangements.

G 446) From. The Govt Advocate
No 180 of 5-1-21

To copy of the order of Chief Court
dated in Criminal Appeal No 58 of 1920
setting aside the order of acquittal passed by the First Class Magistrate of Bandarawela
including return of

WD 2233—GPB—20,000—14-6-20

GENERAL AND REVENUE SECRETARIAT.

(R)

NOTES.

FILE HEADING.

Food Supply arrangements

From

The Govt Advocate

No. 180 Dated 5-1-21 Received

Diary No. 15264 Enclos. 1 Spare Copies. Seri

BRIEF ABSTRACT OF LETTER.

With refce to GO no G 7038-40/ 186-19-400 forwards copy of the order of Chief Court passed in Criminal appeal no. 58 of 9.20-21 Setting aside the order of acquittal passed by the first Class Magistrate of Bhus and directing a retrial.

NOTES AND ORDERS.

DEWAN'S OFFICE.
Recd. on JAN 15 1921
Reg. No. 4749

Submitted for perusal

11/1

Chief Secy)

Dewan

18/1/21

15-1-21.

1/14/1

1/71

...s—First Sheet.

B

SECRETARIAT
BRANCH

SECRETARIAT
POLITICAL BRANCH,
6- JAN. 1921

NO. 15 2084
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6 cg 7
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REV. SEC.

No. 180.

Office of the Government Advocate in Mysore
BANGALORE, dated the 5th January 1921.

ne Government Advocate in Mysore,
B a n g a l o r e.

The Chief Secretary to the Government
of His Highness the Maharaja of Mysore
ANGALORE.

With reference to G. O. No. G 7038-40/P.P.6-19-400 lated the 29th September 1920, I have the honor to for- ard herewith, for the information of Government, a copy f the order of the Chief Court passed in Criminal Ap- eal No. 58 of 1920-21 on their file (Government of - lysore VERSUS S.K.Venkatanaranappa), setting aside the - rder of acquittal passed by the First Class Magistrate f Bangalore, and directing a retrial.

IN THE CHIEF COURT OF MYSORE AT BANGALOR

Wednesday the 15th day of December 19

SIR LESLIE C. MILLER, KT., C.B.E., CHIEF JUI

MR. JUSTICE K.S. CHANDRASEKHARA AIYAR.

Petition of Criminal
ppeal No. 58 of 1920-21
gainst the order of ac-
quittal under section 24
of the Criminal Procedur
ode by the First class
agistrate of Bangalore
in Criminal Case No. 130
of 1919-20.

Appellant.

e Government of Mysor
by
C.S.Doraswami Iyer,
dvocate for Government
(Complainant)

VS.

Respondent.

K.Venkatanarayanappa.
(Accused).

This appeal is from an order of a 1st class Ma
rate acquitting the accused of offences of selling
t a price higher than the legal maximum

The acquittal is based on the Magistrate's vie
the effect of the changes made by the Government
e sales: he assumes that the sales which were ac

were contrary to law and punishable thereunder, but holds that the prosecution in this case, as it was instituted after the withdrawal in February 1919 of the notification of the Government by which a maximum price was fixed.

The sales were in January 1919: on or within a month of the date on which the Government resolved to withdraw the notification under which a maximum price was issued in February 1919, and to be treated for the purposes of this case as a valid [illegible]; and the prosecution was instituted in [illegible] 1919.

The power to fix by notification a maximum price for the sale of rice, and to attach an additional condition to [illegible] under sect. 2 of 1 & 2 Geo. V. of the Government of India as introduced into [illegible] by notification 2 of 1918, of a sale in excess of the maximum price to be punishable by Rule 33 (6).

Now the proviso to section 1(4) of the Act undoubtedly suggests that it was not the intention the Legislature to authorise the institution, ter the expiration of the Act, of prosecutions r offences committed before that time, but the t has not expired; it and the rules framed under are still in force. This proviso therefore nnot be applied to the case.

The Magistrate has declined to apply the ovisions of section 6 of the General Clauses gulation of 1899 on the ground that the with-

drawal

withdrawal of a notification by the Government is not the same thing as the repeal of an enactment as defined in section 3(12) of that Regulation.

on 2 (3) of the Act of 1915 gives to all rules framed under that section the same effect as if they had been enacted in the Act, and one of the effects of their enactment in the Act seems to be that they become part of the Act. If then we are bound to treat them as if they are part of the Act, there seems to be no ground for refusing to consider them as enanctmen within the definition.

art of the argument for the accused as I understood it was that by the withdrawal of the notification a portion of the rules was repealed: if that is so section 6 of the General Clauses Regulation may properly be applied in spite of the fact that it refers in terms only to the case of an enactment repealed a Regulation. I do not see any reason why we should hold ourselves bound to apply the Common Law of England to every case which is not expressly provided for by the Regulation of 1899. I apprehend that if we can find no rule of law in Mysore, to cover a particular case, our duty is to have recourse to the principles of justice, equity and good conscience not only in the cases in which we are specifically enjoined to do so by section 11(c) of the Chief Court Regulation but generally; and I do not see why we should not s for justice, equity and good conscience as much in t Statute law of Mysore as in the Common Law of Englar The argument for the accused to which I have referred above implies if accepted, that the Legislature has

authorised the [illegible] by notification to repeal a rule [illegible] regulation [illegible] of 1911 (or Article IV of 1910, which is the same as it is, and there is no essential difference between the two authorised repeal by notification, [illegible] to the legislature [illegible] creation of a new [illegible].

The two cases [illegible] may it seem to [illegible] effect which the [illegible] which we may not [illegible] clauses [illegible] Therefore if the effect of the notification or 'communique' of 16-7-11 is to repeal rule 7(1),(temporarily if [illegible], it is essential to [illegible].

[illegible] force given: if not no force can be given to it. It does not become extinct in the absence of a notification: it/is at hand for use if required. Therefore it may be that if after it has been brought into force by a notification the notification is withdrawn, it is not repealed strictly speaking but the action is suspended: it still forms part of the law of the country, like other laws which may be brought into force at the will of the Government, by notification.

But the practical effect is the same for the time being as if the rule were repealed: what was punishable as an offence if done yesterday is

.n ascertaining the effect of the withdrawal of t
iotification to apply the principles which would
)lied to the repeal of the rule.

nether therefore we regard the rule as re
)r not, we may apply the rules laid down in the Ce
'lauses Regulation as aids to determine the quest
)efore us, and applying them we must it seems to
iold that the Magistrate's view of the law is wro
iet aside the acquittal.

The learned Government Advocate contends
ie should convict the accused on the record but
ias while admitting the sales in January 1919 pl
iot guilty ~~as~~ and is we think entitled to a trial by the
rate on the merits. We therefore direct a retri
he Magistrate.